

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ROBERT NICKLESON,

Defendant-Appellant.

UNPUBLISHED

March 4, 2003

No. 235373

Mason Circuit Court

LC No. 00-015720-FC

AFTER REMAND

Before: Murphy, P.J., and Sawyer and R. J. Danhof*, JJ.

PER CURIAM.

Following a bench trial, defendant was found guilty but mentally ill of one count each of attempted murder, MCL 750.91, carrying a concealed weapon, MCL 750.227, carrying a dangerous weapon with unlawful intent, MCL 750.226, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to ten and one-half to twenty-five years in prison on the attempted murder conviction, to two to five years in prison on both the concealed weapon and carrying a weapon with unlawful intent convictions, and to the mandatory two-year consecutive term on the felony-firearm conviction. We previously remanded this matter to the trial court to make additional findings regarding the issue of insanity. The matter is now before us following that remand and we now affirm.

Defendant first argues that the trial court erred in rejecting his insanity defense. We disagree. The insanity defense is governed by statute in Michigan. MCL 768.21a(1) provides that a defendant is legally insane if, due to mental illness, he “lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law.” The burden is on the defendant to prove insanity by a preponderance of the evidence. MCL 768.21a(3). The trial court accepted that defendant was mentally ill. The trial court did, however, disagree with defendant’s expert’s conclusion that, because of the mental illness, defendant lacked the substantial capacity to appreciate the wrongfulness of his conduct.

On remand, the trial court articulated at length the reasons for its decision. To summarize the trial court’s findings, defendant was in a relatively calm demeanor during the event, moved in a furtive manner so as to avoid detection, did not make any statements after being disarmed and restrained that reflected a psychotic or delusional state of mind, and during the police

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

interrogation, defendant interacted appropriately and with apparent understanding of what was happening. Perhaps even more on point, the trial court looked to defendant's explanation to the police regarding his choice of weapon: "I used that because it could not be traced." The trial court also pointed out the careful planning of the crime and the concealment of the weapon once defendant arrived at the plant.

The prosecutor also points to evidence that defendant admitted to the examining psychologist that he knew that carrying weapons and shooting somebody was wrong, that defendant's actions were directed at the people who had evicted him from the plant five days earlier and not necessarily at the people who had been the subject of his delusions, and that after being restrained, defendant made the comment that he expected to be arrested and sent to prison.

A trial court's findings of fact are reviewed under the clearly erroneous standard. *Adams Outdoor Advertising, Inc v City of Holland*, 463 Mich 675, 681; 625 NW2d 377 (2001). The evidence adduced at trial demonstrated that defendant endeavored to avoid detection, thus reflecting his understanding that his conduct was wrong. Accordingly, we are not persuaded that the trial court clearly erred in finding that defendant had not overcome the presumption of sanity by a preponderance of the evidence.

Defendant's other argument on appeal is that the trial court erred in finding that there was substantial and compelling reasons for the departure from the sentencing guidelines on the sentences for carrying a concealed weapon and carrying a dangerous weapon with unlawful intent. The trial court's stated reasons for the departure was that the two counts were intimately involved with the attempted murder conviction as well as the nature of the weapons involved, namely a loaded SKS semi-automatic "assault rifle" with 100 rounds of ammunition in ten speed clips, as well as a .22 rifle and ammunition in the automobile.

Whether a factor is objective and verifiable is a question of law, while whether that factor constituted a substantial and compelling reason for departure is reviewed for an abuse of discretion. *People v Babcock*, 244 Mich App 64, 78; 624 NW2d 479 (2000). The nature of the weapons carried is certainly objective and verifiable. Furthermore, we are not persuaded that the trial court abused its discretion in concluding that the fact that defendant armed himself in a manner that would have allowed him to wound or kill a large number of people in a short period of time (100 rounds of ammunition in ten speed clips) constituted a substantial and compelling reason for departure.

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Robert J. Danhof